

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JESSICA MILLAM,
ADMINISTRATOR OF THE
ESTATE OF WAYNE WHALEN

Plaintiff,

vs.

NORTHERN FREIGHT, LLC,
AHMED SANKUS,
SAFARA EXPRESS, LIMITED
LIABILITY COMPANY, and
FEDEX CUSTOM CRITICAL, INC.,

Defendants.

Case No. 20-cv-00797-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Jessica Millam, as Administrator of the Estate of Wayne Whalen (“Plaintiff”) Motion for Leave to File Fourth Amended Complaint. (Doc. 124). Plaintiff requests leave to conform the pleading to the elements under the Survival Act and Wrongful Death Act. (Doc. 124 at ¶ 6). Specifically, Plaintiff indicates that because Wayne Whalen is now deceased, this act survives under the Illinois Survival Act, and because Wayne Whalen death was caused by the collision, there is a Wrongful Death Act claim arising out of this collision. *Id.* at ¶¶ 3-4.

In general, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). “There is a presumption that a plaintiff should have an opportunity to test a claim on the merits,” *Lee v. N.E. Ill. Reg’l Commuter R.R. Corp.*, 912 F.3d 1049, 1052 (7th Cir. 2019), so “the court should freely give leave when justice so requires,” Fed. R.

Civ. P. 15(a)(2). No other party has filed a response or an opposition to the motion and the time for doing so has passed.

The Court hereby **GRANTS** Plaintiff's Motion for Leave to File a Fourth Amended Complaint. (Doc. 124). The Court **ORDERS** Plaintiff to File the Fourth Amended Complaint within 7 days entry of this Order.

IT IS SO ORDERED.

Dated: February 22, 2023

/s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE